Index

accountancy fraud 386–7
GAAP (Generally Accepted Accounting Principles) 88, 93, 218, 223
integrated disclosure system 77–8, 88–90, 102, 107
mandatory rotation of registered firms, call for 293
see also auditing
accredited investors 129–30, 131, 179–80
advertising 127, 131–2, 340–41
Agen, J. 256
Alfriend, M. 205
Allen, F. 158
alternative trading systems (ATS) 189, 190–91, 193–4, 197, 199
Anderson, J. 395
antifraud provisions see fraud arbitration
between customers and brokerage firms see securities arbitration
between customers and brokerage firms
forums for customers damaged by Commodity Exchange Act (CEA) violations 338
and private rights of action 477–81
Art, R. 29
assets under management (AUM) 231, 232–3, 234, 235, 236–7, 238
associated person, broker-dealer regulation 360–61
Atkinson, A. 183
auditing
auditor independence regulation 291–3
broker-dealer requirements 364
committees, regulating structure and function of 295
corporate governance and regulation 252
records, wilful destruction of 304
see also accountancy
“bad boy” provisions 122, 133
Bae, D. 160
bailout programs 497
balance sheet see risk-based regulatory capital rise, banks, balance sheet
bankruptcy 113, 114, 115, 313, 330
banks
bailout programs 497
as dealers 354
exemptions from 1933 Act registration 111
risk-based regulatory capital rise see risk-based regulatory capital rise, banks
security definition under federal securities laws 38–40
Barkate, A. 21
Barnard, J. 314
Barrett, D. 71
Basel Capital Accord see risk-based regulatory capital rise, banks, Basel Capital Accord
Bauguess, S. 178
Benveniste, L. 158
Berle, A. 247
Berman, D. 499
Black, Barbara 412–56
Blau, Leslie A. 457–87
blue sky laws 238–9
boards see directors
Bowman, F. 306
Brandeis, L. 1–2
broker-dealer

517
as alternative trading systems (ATS) 189, 190–91
arbitration between customers and brokerage firms see securities arbitration between customers and brokerage firms
auditing requirements 364
exclusions, investment adviser regulation 230
fraud see fraud, manipulation and other prohibited practices, broker-dealer fraud
internalization as undisplayed liquidity 191–2
proxy rules 258
risk-based regulatory capital see risk-based regulatory capital rise, broker-dealer regulatory capital
routing services 198–9
transactions, safe harbor exemption 147–8
broker-dealer regulation, compliance-related issues 348–77
broker-dealer role and types 348–50
commission system 374–5
compensation 373–6
definitions 351–2
FINRA 348, 351, 354, 363, 367, 375–6
frequent trading 374
over-the-counter market, mark-ups and mark-downs 375–6
uniform fiduciary standard, recommendation of 375
“wrap” account 374
broker-dealer regulation, compliance-related issues, monitoring and importance of recordkeeping, reporting and examinations 361–7
financial reporting 364–5
FOCUS Report 364
instant messaging and social media 363
reporting requirements 363–5
risk-based examination 366–7
SEC and FINRA examinations 365, 366–7, 373
Securities Exchange Act (1934) recordkeeping requirements 362
state securities authorities 367
broker-dealer regulation, compliance-related issues, registration process 356–61 associated person 360–61
Broker-Dealer Withdrawal (BDW) process 358
FINRA membership 356–8, 359–61
individual dealers working for associated firm 358–9
information permanence 361
Securities Exchange Act (1934) conditions 356–7, 358–9
state registration 358
broker-dealer regulation, compliance-related issues, registration requirements 350–56
banks as dealers 354
company buying and selling its own securities, lack of broker-dealer status 355
crowdfunding exemption 123–4, 179–80, 353–4
FINRA 351, 354
foreign broker-dealers 354–5
intermediaries and any associated persons 352–3
regularity of business 351–2
Securities Exchange Act (1934) 350–51
transaction-based compensation and finders 352
broker-dealer regulation, compliance-related issues, supervision, overriding importance of 367–73
disciplinary measures for willful violation of regulations 367–8
enforcement actions 372–3
FINRA supervisory rules 368–9, 370
firms’ compliance function and compliance officers 370–71
NASDAQ principals and supervisory controls 369–70

Jerry Markham and Rigers Gjyshi - 9781782540076
Downloaded from Elgar Online at 03/06/2019 02:19:04AM via free access
supervision and compliance, relationship between 370–71
supervision hierarchy 372
supervisory liability, defense to a charge of 368
written supervisory procedures (WSPs) 369, 370, 371, 372
Broome, L. 490, 512
Brown, K. 289
Bucy, P. 306
Bulan, C. 307
Bunge, J. 332, 504
business involvement, integrated disclosure system 68–71
business organization, and federal securities laws see security definition under federal securities laws, business organizations, interests in
Buttonwood Agreement, secondary markets 186
Campbell, R. 167, 171
Campos, Roel C. 185–200
capital adequacy 208, 213–14
cases
Aaron v. SEC 385, 386
Ackerberg v. Johnson 150, 165
Acunets 100
Aldridge v. A.T. Cross Corp. 76
American Express Co. v. Italian Colors Restaurant 479–81, 482
American Federation Pension Plan v. American International Group 257
American Stellar Energy 96
Amgen v. Conn. Retirement Plans & Trust 483, 484, 486–7
Andropolis v. Red Robin Gourmet Burgers 81
Appert v. Morgan Stanley Dean Witter 462–3
Apple Computer Sec. Litig. 486
Arthur Andersen 77
Associated Randall Bank v. Griffin, Kabik, Stephens & Thompson 485
AT&T Mobility LLC v. Concepcion 474–6, 478, 480, 481
Attas Cold Storage 70
Avern Trust v. Clarke 460
Baron v. Smith 94
Basic v. Levinson 381, 483, 484, 485, 486–7
Batchelor v. Deloitte & Touche 77, 89
Bath Industries v. Blot 262, 263
Bayou Hedge Fund Litig. 472
Belton v. Hatch 187
Blue Chip Stamps v. Manor Drug Stores 379, 380, 418
Board of Trade of the City of Chicago v. SEC 341, 342
Bogart v. Shearson Lehman Bros. 471
Bonanza Once 100
Brehm v. Eisner 245, 250
Brite v. W.J. Howey Co. 45
Burlington Coat Factory Sec. Litig. 485
Busch v. Carpenter 116
Business Roundtable v. SEC 257
Buttrey v. Merrill Lynch, Pierce, Fenner & Smith 459, 461
CA v. AFSCME Employees Pension Plan 255
Cadent Financial Services 333
Cady, Roberts & Co. 388
Calvary Holdings v. Chandler 266
Capital Management Select Fund v. Bennett 331
Carapico v. Phila. Stock Exch. 460
Caremark International 249
Carnegie Intern. Corp. v. Grant Thornton 78
Carpenter v. U.S. 389
Carson v. Lynch Multimedia Corp. 251
Central Bank of Denver v. First Interstate Bank of Denver 381
CFTC v. Kelly 355, 391
Charlestown Boot & Shoe Co. v. Dunsmore 247
Chiarella v. United States 388
Chicago Board of Trade v. Olsen 324
Research handbook on securities regulation in the United States

Chicago Mercantile Exchange v. SEC
342
China Biotics 79
Chromalloy American Corp. v. Sun Chemical Corp. 265
Citigroup Global Markets 363, 373
Citizens Capital Corp. 77, 92
Clark v. Nevis Capital Mgmt. 470, 471, 472
Compucredit Corp. v. Greenwood 477, 480
Cooper Indus. v. Leatherman Tool Group 427
Costello v. Oppenheimer & Co. 402
Cowan v. Orange Belt Sec. Co. 45
Credit Suisse First Boston v. Grunwald 449
CSX Corp. v. Children’s Inv. Fund Mgmt. 262, 344
CTS Corp. v. Dynamics Corp. of America 278
Davis v. Prudential Securities 427
De Kwiatkowski v. Bear Stearns 404
Dean Witter Reynolds v. Byrd 414–15, 474, 482, 483
Deloitte & Touche 330
Dept. of Enforcement v. Charles Schwab & Co. 450–53, 476–8, 480, 482, 483
Detwiler, Fenton & Co. 376
Digital Island Securities Litigation 277
Dirks v. SEC 389, 407
Diskin v. Lomasney 52
Donald J. Trump 260
Dooner v. NMI Ltd. 19
Doran v. Petroleum Management Corp. 128
Dura Pharmaceuticals v. Broudo 381, 382
Edgar v. MITE Corp. 262
Elfochem North America v. Jaffari 251
Emerald Partners v. Berlin 250
Erath v. Xidex Corp. 74, 94
Erica P. John Fund v. Halliburton Co. 381
Ernst & Ernst v. Hochfelder 380, 418
Ernst & Young 30, 31–3, 42, 89, 97, 112
Escott v. BarChris 252
Evergreen Mut. Funds Fee Litig. 469
Fadem v. Ford Motor Co. 78, 79
Farmers Grp. Stock Ops. Litig. 460
Fell & Co. 373
Feine v. Merrill Lynch, Pierce, Fenner & Smith 461, 467
Ferreri v. Mainardi 460
Financial Planning Association v. SEC 374
Finkel v. The Stratton Corp. 384
FINRA v. David Lerner Associates 376
First Options of Chicago v. Kaplan 447
Frank Russell Co. v. Wellington Management Co. 470–71
Free Enterprise Fund v. PCAOB 290, 291
Frigidaire Sales Corp. v. Union Properties 251
Futura Dev. Corp. v. Centex Corp. 43
Ganino v. Citizens Utils. Co. 485, 486
Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith 40
Geman v. SEC 402
General Motors Class E Stock Buyout Securities Litigation 264
Gilligan, Will & Co. v. SEC 165, 166, 171
Glenmon v. Dean Witter 427
Goldstein v. SEC 410
Goodman 401
Goodwin v. Agassiz 387
Gordon v. Comm’r 94
Gurfein v. Ameritrade 463
Gustafson v. Alloyd Co. 252
Guth v. Loft 249
Hall Street Associates v. Mattel 447
Halliburton Co. v. Erica P. John Fund 486
Index 521

Hannay v. First Commodity Corp. 334
Hanson Trust v. SCM Corp. 264–5
Hardy v. Walsh Manning Securities 443
Haveman, Comm. Fint. 334
Hector Gallardo 373
Hector v. Wens 17
Hewlett v. Hewlett-Packard Co. 248
Hill v. Wallace 324
Hocking v. Dubois 28–9
Horizon Asset Mgmt. v. H&R Block 253
Howey test see security definition under federal securities laws, investment contracts and Howey test
Howsam v. Dean Witter Reynolds 428
Humphrey’s Executor v. United States 290
Hunter v. FERC 347
Indiana Farm Bureau Cooper. Association 336
Int’l Brotherhood of Teamsters v. Daniel 15, 17, 42–3
Investment Company Institute v. Camp 4
Ira Haupt & Co. 137, 143
Jablon v. Dean Witter & Co. 460
Jaksich v. Thomson McKinnon Sec. 460
Janus Capital Group v. First Derivative Traders 381
Javitch v. First Montauk Fin. Corp. 467
Jeffries & Co. 374
John H. Gutfreund 371, 372
Jones v. Securities and Exchange Commission 252
Kardon v. National Gypsum Co. 379
King v. Pope 40, 41
Kirby 139
Knights of Columbus Council 3152 v. KFS BD 463
Kosnoski v. Bruce 28
KPMG v. Cocchi 481
Kurz v. Fidelity Management & Research Co. 462
Landow v. Wachovia Sec. 461–62
Landreth Timber Co. v. Landreth 13, 16, 24, 25, 31
Lange v. H. Hentz & Co. 467
Lehman Brothers 331
Leib v. Merrill Lynch, Pierce, Fenner & Smith 404
Levine v. NL Industries 70
Liberman v. Wyoming.com 251
Liberty Prop. Trust v. Republic Prop. Corp. 26
Lormand v. US Unwired 380
Louis K. Liggett Co. v. Lee 246
Lowe v. SEC 340
McCulloch v. Maryland 246
Macfadden Holdings v. JB Acquisition Corp. 273
McMahon (Shearson/American Express v. McMahon) 413, 416–18, 447, 448, 474, 475
McUrady v. SEC 94
Marc Bennett Freeman v. Damian Arahill 462
Marine Bank v. Weaver 39–40, 43
Markowski v. SEC 394
Marmet Health Care Ctr. v. Brown 477, 481
Mary S. Krech Trust v. Lakes Apartments 127, 128
Massachusetts Fin. Services v. Securities Investor Protection Corp. 351
Mastrobuono v. Shearson Lehman Hutton 426–7
Mathews v. Cassidy Turley Maryland 28
Medifast 93
Menkes v. Stolt-Nielsen 70
Merrill Lynch, Pierce, Fenner & Smith (all cases) 40, 320, 335, 383, 401, 402, 404, 459, 461, 466–7
Merrill Lynch, Pierce, Fenner & Smith v. Curran 320, 335
Merrill Lynch, Pierce, Fenner & Smith v. Dubit 383
522  Research handbook on securities regulation in the United States

Mf Global 332
Mihara v. Dean Witter & Co. 401
Miley v. Oppenheimer & Co. 466, 467
Mill Bridge V v. Benton 460–61
Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth 416, 417, 479
Moore Stephens Warth Frazer & Torbet 89
Morgan Keegan & Co. v. Silverman 482
Morris v. Wachovia Securities 472
Morrison v. National Australian Bank Ltd. 379, 380, 381
Morrison v. Olson 290
NASD Dispute Resolution v. Judicial Council of California 449
National Association of Securities Dealers 159
Natures Sunshine Products 97
Neill v. David A. Noyes & Co. 460
Nelson v. Hench 467
Netflix Securities Litigation 68
Newcome v. Esrey 384
Newton v. Merrill Lynch, Pierce, Fenner & Smith 402
Nitro-Lift Techns. v. Howard 475, 479
Norman v. Salomon Smith Barney 469
Oliver v. Black Knight Asset Mgmt. 468, 469
Patzman v. Howey 45
Pavlidis v. New England Patriots Football Club 94
Peil v. Speiser 482
Peoria Union Stock Yards Co. Ret. Plan v. Penn Mat. Life Ins. Co. 15
Pepple v. Rogers 45
Piper v. Chris-Craft Industries 261
PNC Financial Services Group 78
Polaroid Corp. v. Disney 273
Pollack v. Laidlaw Holdings 34
Provenz v. Miller 483
Raymond James Fin. Serv. v. Cary 412
Remington v. Newbridge Securities Corp. 465
Revak v. SEC Realty Corp. 19
Reves v. Ernst & Young 30, 31–3, 42, 112
Roche Diagnostics Corp. v. Medical Automation Systems 90
Rodriguez de Quijas v. Shearson/Am. Express 413, 417
Rogers v. Hill 250
S-G Sec. v. Futha Inv. Co. 265
Santa Fe v. Green 260, 380, 392, 418
Savino v. E.F. Hutton & Co. 19
Scherk v. Alberto-Culver Co. 474
Schlifke v. Seairst Corp. 31
Schnurmacher Holding v. Noriega 417
Schreiber v. Burlington Northern 278
Schwab (Dept. of Enforcement v. Charles Schwab & Co.) 450–53, 476–8, 480, 482, 483
Seahawk Deep Ocean Technology 92
Sears v. Likens 384
SEC v. Arvida Corp 52–3
SEC v. Baker 308
SEC v. Black 68
SEC v. Blackout Media Corp. 10
SEC v. Capital Gains Research Bureau 42, 386, 404
SEC v. Carter Hawley Hale Stores 264
SEC v. Caserta 93
SEC v. Cavanagh 52, 66
SEC v. Chinese Consolidated Benevolent Association 139–40, 162, 169
SEC v. Continental Tobacco Co. 127
SEC v. Diversified Growth Corp. 90, 92
SEC v. Edwards 21, 22, 23, 42
SEC v. ETS Payphones 19
SEC v. Falstaff Brewing Corporation 101
SEC v. First Pacific Bancorp 8
SEC v. First Sec. Co. of Chi. 460
SEC v. Gagnon 352
SEC v. Geswein 308
SEC v. Glenn W. Turner Enterprises 19, 23
SEC v. Guild Films Co. 140–41
<table>
<thead>
<tr>
<th>Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEC v. Holschuh 135</td>
</tr>
<tr>
<td>SEC v. Howey 13, 15, 16–24, 26, 31, 40–41, 42, 44–5</td>
</tr>
<tr>
<td>SEC v. IMC International 101</td>
</tr>
<tr>
<td>SEC v. International Loan Network 23</td>
</tr>
<tr>
<td>SEC v. Jenkins 308</td>
</tr>
<tr>
<td>SEC v. Kenton Capital 230</td>
</tr>
<tr>
<td>SEC v. Kovzan 81</td>
</tr>
<tr>
<td>SEC v. KPMG 88</td>
</tr>
<tr>
<td>SEC v. Kramer 352</td>
</tr>
<tr>
<td>SEC v. Lauer 18</td>
</tr>
<tr>
<td>SEC v. Life Partners 24, 37</td>
</tr>
<tr>
<td>SEC v. McDonald Inv. Co. 117</td>
</tr>
<tr>
<td>SEC v. Management Dynamics 67</td>
</tr>
<tr>
<td>SEC v. Melchoir 98</td>
</tr>
<tr>
<td>SEC v. Merchant Capital 27</td>
</tr>
<tr>
<td>SEC v. Microtune 308</td>
</tr>
<tr>
<td>SEC v. Mount Vernon Mem’l Park 4</td>
</tr>
<tr>
<td>SEC v. Mowen 352</td>
</tr>
<tr>
<td>SEC v. Murphy 135</td>
</tr>
<tr>
<td>SEC v. Mutual Benefits Corp. 24</td>
</tr>
<tr>
<td>SEC v. North American Research &amp; Development Corp. 67</td>
</tr>
<tr>
<td>SEC v. Park 240, 393</td>
</tr>
<tr>
<td>SEC v. Prince 91</td>
</tr>
<tr>
<td>SEC v. Ralston Purina Co. 125–6, 128, 166, 170–71, 180</td>
</tr>
<tr>
<td>SEC v. Ramoil Management 89</td>
</tr>
<tr>
<td>SEC v. Retail Pro 101</td>
</tr>
<tr>
<td>SEC v. Sands 8</td>
</tr>
<tr>
<td>SEC v. SG Ltd. 18, 19, 20</td>
</tr>
<tr>
<td>SEC v. Sierra Brokerage Services 101</td>
</tr>
<tr>
<td>SEC v. Snyder 96</td>
</tr>
<tr>
<td>SEC v. Softpoint 66</td>
</tr>
<tr>
<td>SEC v. Texas Gulf Sulphur Co. 38</td>
</tr>
<tr>
<td>SEC v. United Benefit Life Insurance Company 38</td>
</tr>
<tr>
<td>SEC v. Universal Major Indus. 67</td>
</tr>
<tr>
<td>SEC v. Variable Annuity Life Ins. Co. 37, 114</td>
</tr>
<tr>
<td>Sentinel Management Group 332</td>
</tr>
<tr>
<td>Shaw v. Digital Equip. Corp. 485</td>
</tr>
<tr>
<td>Shearson/American Express v. McMahon 413, 416–18, 447, 448, 474, 475</td>
</tr>
<tr>
<td>Sherman v. SEC 10</td>
</tr>
<tr>
<td>Shroyer v. New Cingular Wireless Servs. 476</td>
</tr>
<tr>
<td>Silver Hills Country Club v. Sobieski 41</td>
</tr>
<tr>
<td>Silverman v. Cooper 417, 448</td>
</tr>
<tr>
<td>Silverstrand Investments v. AMAG Pharmaceuticals 76</td>
</tr>
<tr>
<td>Smith v. Van Gorkom 250</td>
</tr>
<tr>
<td>Smolowe v. Delendo Corp. 388</td>
</tr>
<tr>
<td>Software Toolworks v. PaineWebber 252</td>
</tr>
<tr>
<td>South Cherry St. v. Hennessee Group 380</td>
</tr>
<tr>
<td>Spicer v. Chi. Bd. of Options Exch. 460</td>
</tr>
<tr>
<td>State v. Gopher Tire &amp; Rubber Co. 18, 40</td>
</tr>
<tr>
<td>State v. Hawaii Market 40–41</td>
</tr>
<tr>
<td>Stevenson v. Rochdale Inv. Mgmt. 465</td>
</tr>
<tr>
<td>Stolt-Nielsen v. AnimalFeeds International Corp. 447</td>
</tr>
<tr>
<td>Stoltzfus v. Howey 45</td>
</tr>
<tr>
<td>Stoneridge Inv. Partners v. Scientific-Atlanta 31, 381</td>
</tr>
<tr>
<td>Strong v. Repide 387</td>
</tr>
<tr>
<td>Thgerepnin v. Knight 14, 15, 24, 37</td>
</tr>
<tr>
<td>TD Ameritrade 373</td>
</tr>
<tr>
<td>Tellabs v. Makor Issues &amp; Rights 382</td>
</tr>
<tr>
<td>Theodore W. Urban 370–71</td>
</tr>
<tr>
<td>Thompson v. RelationServe Media 380</td>
</tr>
<tr>
<td>Thrifty Oil Co. v. Bank of Am. Nat’l Trust &amp; Sav. Ass’n 322</td>
</tr>
<tr>
<td>Touche Ross &amp; Co. v. Redington 458</td>
</tr>
<tr>
<td>Transamerica Mortgage Advisors v. Lewis 242, 386, 460, 461, 468–9, 470, 472</td>
</tr>
<tr>
<td>Trusler v. Crooks 324</td>
</tr>
<tr>
<td>United Housing Foundation v. Forman 14, 15, 16, 22, 23, 24, 31, 41</td>
</tr>
<tr>
<td>U.S. v. Bloom 465</td>
</tr>
<tr>
<td>U.S. v. Gueterna 101</td>
</tr>
<tr>
<td>U.S. v. Leonard 27</td>
</tr>
<tr>
<td>U.S. v. Naftalin 385</td>
</tr>
<tr>
<td>U.S. v. O’Hagan 279, 389</td>
</tr>
<tr>
<td>U.S. v. Perkins 290</td>
</tr>
<tr>
<td>U.S. v. Sherwood 141</td>
</tr>
</tbody>
</table>
524  Research handbook on securities regulation in the United States

U.S. v. Stein 391
U.S. v. Wolfson 135, 137, 143–4, 169
Valentini v. Citigroup 470, 471
Verifone Sec. Litig. 484, 485
Wachovia Bank v. VCG Special Opportunities Master Fund 323, 412–13
Wachovia Sec. v. Brand 447
Walck v. Am. Stock Exch. 460
Wals v. Fox Hills Development Corp. 29
Walzer v. UAL Corp. 69
Warfield v. Alaniz 17
Warfield v. Byron 10
Wash. Square Sec. v. Aune 482
Wellman v. Dickinson 262–3, 264
Western Federal Corp. v. Erickson 128
Wilko v. Swan 413, 414, 416, 417, 447, 474, 475
Williamson v. Tucker 25
Wiswall v. Greenville and Raleigh Plank Road 246
Wolf v. Banco Nacional de Mexico 44
Worldcom 10
Zeltser v. Merrill Lynch & Co. 481–3

cash dividends 72
and forward contracts 316–17
CFTC see Commodity Futures Trading Commission
Chandler, W. 307
Chenmanur, T. 159–60
Cherry, M. 307
Chicago Board Options Exchange creation 341
Cho, D. 495
Choi, S. 179, 182, 291
churning (excessively trading) 335, 402
class actions 382–3, 450–53, 475–6
clearing houses 318–19
closed-end investment company 269
code of ethics 81–2, 241, 300–301
Coffee, J. 163, 181
Cohen, M. 49
collateralized debt obligations (CDOs) 323, 510
commercial paper see notes
Commodities Future Modernization Act (CFMA) 35
Commodity Exchange Act (CEA) 323–5, 337, 338–9
Commodity Futures Modernization Act (CFMA) 412–13
Commodity Futures Trading Commission (CFTC) 3
cross-border regulation of EU and US firms, concerns over 509
futures commission merchants (FCMs), trading requirements 400
futures regulation 34–5
insider trading 390–91
investment adviser regulation 236
organizational structure see derivative instruments regulation, Commodity Futures Trading Commission (CFTC), organizational structure
overlapping jurisdiction, CFTC and SEA 346
Reauthorization Act 344
regulatory powers see derivative instruments regulation, Commodity Futures Trading Commission (CFTC) regulatory powers
rules-based approach 491
SEC and CFTC merger proposal 494–5, 503–4
swaps jurisdiction 7–8, 36, 497, 498–9
see also futures compensation broker-dealers 373–6
contingent arrangements between registrant and named experts 84
and corporate governance see corporate governance and regulation, compensation disclosures
employee plans of issuers not subject to Exchange Act periodic reporting requirements 124–5
equity 73
executives 7, 80–81, 107, 250, 307–9
Cornelli, F. 157
corporate governance, federal regulation, Sarbanes-Oxley Act 284
corporate governance and regulation 244–81
corporate governance history 244–5
fiduciary duties 248–50
independent directors 258
insider trading 259–60
limited liability companies (LLC) 251
loans to executives, prohibition of 259
Model Business Corporation Act 247
outside legal counsel reporting requirements 258–9
registration and audit requirement 252
Securities Act (1933) 251–2
Securities and Exchange Act (1934) 252–3
see also security definition under federal securities laws, business organizations, interests in
corporate governance and regulation, compensation disclosures 253–5
excessive executive 250
and leveraging practices 254
management discussion and analysis (MD&A) 253
Omnibus Revenue Reconciliation Act 254–5
shareholder involvement 255–6
stock options 254–5
corporate governance and regulation, mergers and acquisitions and Williams Act 261–81
beneficial ownership 265–6, 267–8
definitions 262–6
disclosure requirements 266–8
insurance company securities not exempt from registration 269
material changes, notification of 267–8
ownership and 5 percent threshold 266, 268
person or group of persons definition 262–3
corporate governance and regulation, mergers and acquisitions and Williams Act, purchase of securities by issuer (going private transaction) 274–80
covered persons prohibited from buying securities that are target of tender offer during target period 279
directors or facilitating officers, changes to 280
equity securities that issuer of securities carries out 275
extensive disclosure requirements, exclusion of 277
information disclosure 274–5
prohibited conduct (antifraud provision) 278–80
roll-up transactions 279–80
Securities Act (1933), prospectus requirement 276
securities of same class for at least ten days after tender offer termination date 277
shareholders tendering more shares than originally sought 276–7
short tenders during partial tender offers 279
tender offers deemed published 275–6
third party tender offer exclusion 274
corporate governance and regulation, mergers and acquisitions and Williams Act, tender offer All Holders Rule 273
commencement date 269–70, 272
definition 263–5
material changes, notification of 271
mini tender offers 280–81
pre-commencement communications 269
publication 270–71
Securities Act (1933) registration 270–71
securities offer, withdrawal opportunities 272–3
shareholders tendering more shares than originally sought 276–7
short tenders during partial tender offers 279
stockholder list or security position listings 271–2
third party statements 273
third party tender offer exclusion 274
totality of circumstances test 264–5
Williams Eight-Factor Test 263–4
corporate governance and regulation, proxy rules 255–8
board of directors’ structure 256–7
broker-dealers 258
dissident nominations, inclusion of 257
institutional investors and policy disclosure 257–8
shareholder votes 248
state laws violation matters, exclusion of 255–6
corporate governance and regulation, state corporate law statutes 246–8
Delaware statute 246–7, 248, 249, 250
internal affairs doctrine 247
proxy votes by shareholders 248
Cowen, D. 186
Cox, J. 16, 27, 28, 31, 35, 37, 164, 166, 170, 171, 247, 251, 299–300
Cramton, R. 312
credit default swaps 7–8, 35–6, 203, 322–3, 342–5, 346, 377, 515–16
Crisp, K. 395
crowdfunding exemption 123–4, 179–80, 353–4
customers
account churning 335, 402
arbitration with brokerage firms see securities arbitration between customers and brokerage firms
CFTC protection rules 333–4, 335
funds, custody of 330–32
funds, misuse of 405–6
margin posting 319–20
damages 338–9, 382, 384, 426–7
dark pools 191, 501–2
day traders 396–7
de la Merced, M. 495
dealer see broker-dealer
debt
bankruptcy 113, 114, 115, 313, 330
collateralized debt obligations (CDOs) 323, 510
and equity financing, acceptable blend 208
loans to executives, prohibition of 259, 307
repayment rather than holding cash 212–13
securities 4–5, 74–5
Delaware statute 246–7, 248, 249, 250
demutalization of stock and commodity exchanges, effects of 504
deposit insurance 204
derivative
definition 34–6
over-the-counter see over-the-counter (OTC) derivatives
derivative instruments regulation 316–47
cash and forward contracts 316–17
credit default swaps 35–6, 203, 322–3, 342–5, 515–16
definitions 316–23
options contracts, standardization 321–2
overlapping jurisdiction 346–7
regulatory history 323–5, 337
subprime mortgage securitizations 323
derivative instruments regulation, commodity futures contracts 318–21, 324
clearing houses 318–19
customers’ margin posting 319–20
designated contract market (DCM) 318–19
futures commission merchant (FCM) 319, 320
hedging 320–21
introducing broker (IB) 319
speculation 320
standardization 318
derivative instruments regulation,
Commodity Futures Trading
Commission (CFTC), regulatory
powers 326–43
advertising restrictions 340–41
churning (excessively trading) a
customer’s account 335
Commissioners 326
commodity trading advisers (CTAs)
and commodity pool operators
(CPOs) 339–41
customer funds, custody of 330–32
customer protection rules 333–4, 335
forums available for customers
damaged by Commodity
Exchange Act (CEA) violations
338–9
fraud prohibition 334–5, 336–7
futures commission merchants
(FCMs) 330–33
futures commission merchants
(FCMs), regulation and financial
reporting requirements 329–30
insider trading 335
manipulative and abusive trading
practices 336–8
market regulation 328–9
National Futures Association (NFA)
328
offices 327–8
risk disclosure statements 339–40
self-regulatory organizations (SROs)
328–9
staff divisions 326–7
unauthorized trading claims 335
derivative instruments regulation,
jurisdictional battles 341–5
CFTC Reauthorization Act 344
CFTC and SEC regulatory powers
341–3
Chicago Board Options Exchange
creation 341
commodity futures contracts, growth
of 341
Commodity Futures Modernization
Act (CFMA) 343–4
Dodd-Frank Act swaps regulation
344–5
exempt commercial markets (ECMs)
and Enron loophole 344–5
Futures Trading Act 341, 342, 343
over-the-counter (OTC) energy
derivatives exemption 343
SEC options regulation 341–2
Shad-Johnson Accord and Futures
Trading Act 341, 342
significant price discovery contracts
(SPDCs) regulation 344
swaps as form of futures, uncertainty
about 342–5
Derrien, F. 157
designated contract market (DCM)
318–19
directors
board structure 256–7
independence 107, 258
integrated disclosure system 80
mergers and acquisitions and
Williams Act 280
personal loans, prohibition of 307
securities trading during blackouts
309–10
voting restrictions 7
see also executives
disclosure requirements
integrated disclosure system see
integrated disclosure system,
continuous disclosure under
1934 Act, periodic reports
investment adviser regulation see
investment adviser regulation,
disclosure requirements
mergers and acquisitions and
Williams Act 266–8
qualified exemption for offerings up
to $5 million per year 121–2
risk statements, commodity trading
advisers (CTAs) and commodity
pool operators (CPOs) 339–40
Sarbanes-Oxley Act 285, 286
discretionary accounts 404–5
Dodd-Frank Act (2010)
accredited investor thresholds 121,
130, 134
broker-dealer auditing requirements
364
broker-dealer monitoring 366, 411
Bureau of Consumer Financial Protection (BCFP) 498–9
commodity price manipulation 336
compensation disclosure 7, 80, 256, 308–9
disclosure requirements for registered investment advisers 233, 236
extraterritorial application 381–2
and Financial Stability Oversight Council (FSOC) 497–8
hedge fund adviser categories 6, 230–31
hedge funds and commodity pools registration requirements 4, 339, 410
internal control reports 299
investment advisers and qualified client standards 6, 7, 239
management compensation disclosure 254, 258
manipulation by false reporting 337–8
minimum regulatory capital requirements 215–16
and Private Fund Investment Advisers Registration Act (PFIARA) 231–3
proxy vote and dissident nominations 257
safeguards for client assets 240
securities arbitration and PDAAs 450
short selling 395
swaps regulation 3, 7–8, 35–6, 323, 328, 344–5, 377, 496–7
systemically important nonbank financial institution (SIFI) status 225–6
Donaldson, W. 197
downstream sales by non-issuers 148–50
“dribble out” provisions 147
Easterbrook, F. 182
economic reality test 24
efficiency assessment, underwriting process and secondary distribution 162–3
efficient capital markets hypothesis 484
Efrati, A. 495
Electronic Communications Networks (ECNs) 190–91
electronic trading 499–504
eleemosynary (not for profit) organizations 112
Employee Retirement Income Security Act (ERISA) 43, 120
Enron 282–3, 301, 304, 311, 344, 344–5
economics code 81–2, 241, 300–301
European Union, securities regulation see global securities regulation, comparative analysis, European Union
Evans, Peter 457–87
excessively trading (churning) 335, 402
exchange-listed securities, exclusion of 233
executives compensation 7, 80–81, 107, 250, 307–9
integrated disclosure system 79, 80–81, 107
loans to, prohibition of 259, 307
see also directors
exempt commercial markets (ECMs) and Enron loophole 344–5
exemptions from 1933 Act registration 109–55
“bad boy” provisions 122, 133
building and loan associations and farmers’ cooperatives 112–13
burden of proof 110
certificates issued under Bankruptcy Act by receivers and trustees 113, 114, 115
crowdfunding exemption 123–4, 179–80
eleemosynary (not for profit) organizations 112
employee compensation plans of issuers not subject to Exchange Act periodic reporting requirements 124–5
establishing successful exemption, problems with 110
governments, banks, insurance companies and qualified pension plans 111
insurance policies and annuity contracts 113–14
JOBS Act and offerings up to $50 million per year 122–3
offshore transactions in securities of US issuers, safe harbors 152–3
qualified exemption for offerings up to $5 million per year (Regulation A) 121–2
qualified exemptions for small issues (not exceeding $5 million) 119–21
SEC’s general exemptive authority 153–4
securities exchanged exclusively with existing security holders 114
securities issued in judicially or administratively approved reorganizations 115
short-term commercial paper transactions 111–12
state securities laws overlap 110–11
transaction integration 154–5
exemptions from 1933 Act registration, intrastate offerings 115–19
limited partnership, trust or other form of business organization 116
out-of-state operations and use of proceeds 117
safe harbor rule 116, 117–19, 167–8
state registration requirements 119 and state size 116
statutory exemption 115–17
transaction integration 154–5
exemptions from 1933 Act registration, issuer transactions not involving a public offering (private placement exemption) 125–9
information access requirements 126, 128
investment letter requirements 127–8
number of offerees and size of offering 126
offerees must understand information that is available to them 126, 128
public advertising ban 127
safe harbor rule 125, 127, 128
transaction integration 155
exemptions from 1933 Act registration, secondary transactions 135–51
dealer definition 136
dealers’ transactions, exemptions for certain 150–51
definitions 135–6
downstream sales by non-issuers (Rule 144A) 148–50
forty/ninety-day “quiet period” 151
issuer definition 135–6
prospectus delivery requirements 151
unsolicited brokers’ transactions 136–8
exemptions from 1933 Act registration, secondary transactions, safe harbor exemption 144–8, 166
brokers’ transactions 147–8
“dribble out” provisions 147
holding period for resales of restricted securities 146–7
information requirements 145–6
integration and safe harbor rule 131
restricted activities 145
safe harbor for private placements (Rule 506) 122, 125, 127, 128, 130, 131, 132, 133, 134, 173
sales notice 148
volume limitations on all sales of securities 147
Wheat Report 145
exemptions from 1933 Act registration, secondary transactions, underwriter definition 136, 138–44
and broker-dealers 144
“change in circumstances” exception 141–2
dealers who are members of selling group, exclusion of 139
downstream sales and safe harbor rule 139
inadvertent underwriters and case law development 139–41
investment intent and holding period 141
sales on behalf of control persons 143–4
status requirements 138–9, 144
exemptions from 1933 Act registration, small issues and small issuers (Regulation D) 129–32
absence of advertising 131–2
accredited investor definition 129–30, 131, 179
affiliate definition 130
aggregate offering price definition 130
conditions of offerings 130–32
definitions 129–30, 134
exemption for small issues of $1 million or less 130, 131, 132, 133
filing notice of sales 132
information requirements 131
insignificant deviations 132
integration and safe harbor rule 131
limited offerings not exceeding $5 million 120–21, 122, 130, 131, 132, 133-4
purchaser representative definition 130
qualified exemptions for small issues (not exceeding $5 million) 119–21
qualified exemptions for small issues (not exceeding $5 million), limited offerings solely to accredited investors 120–21
resale restrictions 132
safe harbor for private placements 122, 125, 127, 128, 130, 131, 132, 133, 134, 173
savings clause for an insignificant failure 132
exhibits table, integrated disclosure system 84–7
extraterritorial application limitation 381–2

Facciolo, F. 401, 508
Fair dealing 398–400
Fair Labor Standards Act 479–80
Fairfax, L. 297
fairness perceptions, arbitration between customers and brokerage firms 448–55
family resemblance test 32
Fang, L. 159
Fanto, James 348–77
Farmery, P. 318
Faulhaber, G. 158
Federal Arbitration Act 474–83
Federal Deposit Insurance Corporation Improvement Act (FDICIA) 206–7
Federal Energy Regulatory Commission (FERC) 346–7
Federal Trade Commission (FTC) 347
fees 159, 228, 242–3
fiduciary duties corporate governance and regulation see corporate governance and regulation, fiduciary duties
fraud, manipulation and other prohibited practices 403–5
uniform standard, recommendation of, broker-dealer regulation 375
Fienberg, L. 455
Financial Accounting Standards Board 88
financial analyst scandals 407
financial crisis (2008) 496–8
financial expert disclosure requirement 301–2
Financial Industry Regulatory Authority (FINRA) arbitration between customers and brokerage firms 421–2
arbitration and dispositive motions 437–9
arbitration forum and representation of parties 444–5, 453, 455
arbitrator selection 431–3
arbitrator training 435–6
broker-dealer fraud, shingle theory 397–8

Research handbook on securities regulation in the United States
broker-dealer membership, mandatory nature 357–8, 359–61
broker-dealer regulation, compliance-related issues 348, 351, 354, 363, 367, 375–6
Central Registration Database 356–7
class actions 452–53, 454, 473–4, 476–8, 481–83
customer v. member class litigation and arbitration 473–4
dispute resolution 412–13
duty to supervise 459
eligibility rule 427–8
examinations, broker-dealer regulation 365, 366–7, 373
expungement requests 441–2
forum and representation of parties 444–5, 453, 455
"Know Your Customer" requirement 458–9
low priced "penny stocks" 399–400
pattern day traders 397
public and non-public arbitrators, definitions 433–4
reasoned awards 443–4
rule violations 462–3
sales loads and mutual fund shares 408
secondary markets, regulatory structure 191, 195, 196
supervisory rules 368–9, 370
surveillance strategy, insider trading 390
unfairness perception 448–9, 454–5
Financial Stability Board (FSB) 509–10
Financial Stability Oversight Council (FSOC) 216, 226–7, 233, 234–5, 236, 237–8
financial statements
accuracy and completeness, public company disclosures 297–8
broker-dealer regulation 364–5
integrated disclosure system 75–9, 88–94, 102, 103, 107–8
Securities and Exchange Act (1934) 252–3
Fischel, D. 182
Fitterman, M. 419
Fitzpatrick, D. 71
Fleckner, A. 177
FOCUS Report, broker-dealer regulation 364
foreign broker-dealers 354–5
Foreign Corrupt Practices Act 44
foreign private adviser exemption 232
foreign regulatory scheme 43–4
forward contracts 316–17
Fox, M. 163
fraud
antifraud provisions 30–31, 278–80, 340
fraud-on-the-market presumption 481–5
prohibition, Commodity Futures Trading Commission (CFTC) 334–5, 336–7
Sarbanes-Oxley Act see Sarbanes-Oxley Act, fraud and misstatements regulation
fraud, manipulation and other prohibited practices 378–411
accounting fraud 386–7
day traders 396–7
fiduciary duties 403–5
fiduciary duties, discretionary and non-discretionary accounts 404–5
financial analyst scandals 407
free riding 396
Investment Advisers Act (IAA) (1940) 385–6, 410
margin requirements for purchase of stock 396–7
markups, markdowns and commissions 403
misuse of customer funds 405–6
underwriting scandals 407–8
fraud, manipulation and other prohibited practices, broker-dealer fraud 397–403
churning 402
duty of best execution 401–2
fair dealing and suitability 398–400
low priced "penny stocks", suitability requirements 399–400

Financial Stability Board (FSB) 509–10
Financial Stability Oversight Council (FSOC) 216, 226–7, 233, 234–5, 236, 237–8
financial statements
accuracy and completeness, public company disclosures 297–8
broker-dealer regulation 364–5
integrated disclosure system 75–9, 88–94, 102, 103, 107–8
Securities and Exchange Act (1934) 252–3
Fischel, D. 182
Fitterman, M. 419
Fitzpatrick, D. 71
Fleckner, A. 177
FOCUS Report, broker-dealer regulation 364
foreign broker-dealers 354–5
Foreign Corrupt Practices Act 44
foreign private adviser exemption 232
foreign regulatory scheme 43–4
forward contracts 316–17
Fox, M. 163
fraud
antifraud provisions 30–31, 278–80, 340
fraud-on-the-market presumption 481–5
prohibition, Commodity Futures Trading Commission (CFTC) 334–5, 336–7
Sarbanes-Oxley Act see Sarbanes-Oxley Act, fraud and misstatements regulation
fraud, manipulation and other prohibited practices 378–411
accounting fraud 386–7
day traders 396–7
fiduciary duties 403–5
fiduciary duties, discretionary and non-discretionary accounts 404–5
financial analyst scandals 407
free riding 396
Investment Advisers Act (IAA) (1940) 385–6, 410
margin requirements for purchase of stock 396–7
markups, markdowns and commissions 403
misuse of customer funds 405–6
underwriting scandals 407–8
fraud, manipulation and other prohibited practices, broker-dealer fraud 397–403
churning 402
duty of best execution 401–2
fair dealing and suitability 398–400
low priced "penny stocks", suitability requirements 399–400

Index 531
reasonable basis in fact for securities recommendations 400–401
shingle theory 397–8
supervisory procedures 397–8
unauthorized trading 402–3
fraud, manipulation and other prohibited practices, insider trading 387–91
and Commodity Futures Trading Commission (CFTC) 390–91
person “tipped” with inside information 389
persons in possession of inside information 389
SEC and FINRA surveillance strategy 390
SEC penalties 389
Securities Exchange Act (1934) 387–9
fraud, manipulation and other prohibited practices, manipulation claims 391–6
pump-and-dump schemes 392–3
rigged trades and open market trade 393–4
short sale “tick test” 394–5
short sales 394–6
statutory prohibitions 391–2
fraud, manipulation and other prohibited practices, mutual fund issues 408–11
breakpoints 408–9
investment advisers 410–11
late trading and market timing 409–10
sales loads 408
“soft dollar” practices 410
switching between funds 409
fraud, manipulation and other prohibited practices, Securities Act (1933), Section 17(A) 383–5
damages and permitted defenses, restrictions on 384
“due diligence” investigation and undiscovered misstatements or omissions 384
private right of action 384–5
SEC registration statement 383
fraud, manipulation and other prohibited practices, Securities Exchange Act (1934), Section 10(B) 378–85
class actions and Class Action Fairness Act (CAFA) (2005) 383
class actions’ restrictions and Private Securities Litigation Reform Act (PSLRA) (1995) 382–3
class actions and Securities Litigation Uniform Standards Act (SLUSA) (1998) 383
defendant acting with some form of recklessness 380
extraterritorial application limitation 381–2
materiality requirement 380–81
misrepresentation or omission reliance 381
private right of action 379–80, 381, 384
“windfall” damages, prevention of 382
free riding 396
Fulghieri, P. 160
Furey, J. 506
futures
CFTC see Commodity Futures Trading Commission (CFTC)
commodity futures contracts see derivative instruments regulation, commodity futures contracts
Commodity Futures Modernization Act (CFMA) 495
commodity trading, overlapping jurisdiction 346–7
commodity trading advisers (CTAs) 339–41
definition 34–5
futures commission merchants (FCMs) 319, 320, 330–33
swaps as form of futures, uncertainty about 342–5
Futures Trading Act 324, 341, 342
Index  533

GAAP (Generally Accepted Accounting Principles) 88, 93, 218, 223
Gabilondo, José 201–27
Gadinis, S. 508
Galbadon, T. 25
Getter, D. 207, 214, 216
Gilberg, D. 341
Gjyshi, Rigers 47–108, 244–81
global securities regulation,
comparative analysis 488–516
Germany 512–13
IOSCO (International Organization of Securities Commissions) and
credit default swaps 514–15
Japan 513–15
Japan, Financial Instruments and Exchange Law (FIEL) 514–15
principles-based approach 491
US regulators 488–9
global securities regulation,
comparative analysis, European Union 508–12
cross-border regulation of EU and US firms, concerns over 509
de Larosière Report 509–10
European Market Infrastructure Regulation (EMIR) 511
European Securities and Marketing Authority (ESMA) 511
and Financial Stability Board (FSB) 509–10
high-frequency traders (HFT) 511–12
Lamfalussy level Committees 508
Markets in Financial Instruments Directive (MiFid) 508, 511
securities regulation, improved 510–11
global securities regulation,
comparative analysis, UK
Bank of England Prudential Regulatory Authority (PRA) 507
Financial Conduct Authority (FCA) creation 506–7
Financial Services Authority (FSA) 492–3
Financial Services Authority (FSA), failure of 504–6
global securities regulation,
comparative analysis, US regulation future 499–504
demutualization of stock and commodity exchanges, effects of 504
electronic trading and high frequency trading 499–504
electronic trading and high frequency trading, dark pools 501–2
global securities regulation,
comparative analysis, US Treasury Department Blueprint 489–92
bailout programs 497
financial crisis (2008) 496–9
financial crisis (2008), Dodd-Frank Act and Bureau of Consumer Financial Protection (BCFP) 498–9
financial crisis (2008), Dodd-Frank Act and Financial Stability Oversight Council (FSOC) 497–8
and functional regulation inadequacies 489–90
opposition to 495–6
SEC and CFTC merger proposal 493–5, 503–4
single regulator model rejection 493–4
“Twin Peaks”-style regulatory approach 493–4, 506
going private transaction see corporate governance and regulation,
mergers and acquisitions and Williams Act, purchase of securities by issuer (going private transaction)
Goldreich, D. 157
Goldstein, J. 393
Gordon, J. 18
Goshen, Z. 181
Governmental Accounting Standards Board 7
Grain Futures Act 324
Gramm-Leach-Bliley Act 354, 490

Jerry Markham and Rigers Gjyshi - 9781782540076
Downloaded from Elgar Online at 03/06/2019 02:19:04AM
via free access
Grant, J. 510
Grinberg, R. 14
Gross, J. 417, 428, 432, 443, 447, 448, 449, 450, 451
Gubler, Zachary J. 156–84
gun-jumping provisions 53, 55, 58
Guzman, A. 182
Hamdani, A. 163
Hamill, S. 246
Hamilton, J. 257
Harrington, S. 223, 225
Hart-Scott-Rodino Act 280–81
Harty, D. 329, 499, 503
hedge funds 4, 6, 230–31, 232, 237, 320–21
Henriques, D. 6, 505
Herring, R. 222, 224
high frequency trading 499–504
holding period 146–7, 165–6, 173–5, 181
Hrovatin, S. 510
Ibbotson, R. 158
Ide, R. 287
information disclosure
fraud-on-the-market presumption 483–7
information permanence, broker-dealer regulation 361
integrated disclosure system see integrated disclosure system
investor understanding facilitation 68
issuer transactions not involving a public offering 126, 128
mergers and acquisitions and Williams Act 274–5, 277
secondary transactions, safe harbor exemption 145–6
small issues and small issuers 131
underwriting process and secondary distribution 159–60, 174
initial public offering (IPO) 252
insider trading 259–60, 335
and fraud see fraud, manipulation and other prohibited practices, insider trading
Insider Trading Sanctions and Fraud Enforcement Act 398
instant messaging and social media 363
institutional investors 257–8
institutionalizing risk-based capital 205–13
insurance companies
exemptions from 1933 Act registration 111, 113–14
mergers and acquisitions and Williams Act 269
products, security definition under federal securities laws 36–8
risk-based regulatory capital see risk-based regulatory capital rise, insurance companies
integrated disclosure system 47–108
integrated disclosure system, continuous disclosure under 1934 Act, periodic reports, annual reports, Form 10-K 62, 105–8
accountancy changes and disagreements 107
executive compensation 107
exhibits and financial statement schedules 107–8
financial statements and supplementary data 107
legal proceedings 106
management’s discussion and analysis of financial conditions 106
market for registrant’s common equity 106
related-person transactions and director independence 107
risk factors 106
integrated disclosure system, continuous disclosure under 1934 Act, periodic reports, material events, Form 8-K 101–3
accountants and financial statements 102
governance and management
changes 102–3
registrant’s financial information 102
integrated disclosure system,
continuous disclosure under 1934
Act, periodic reports, quarterly
reports, Form 10-Q 103–5
company controls and procedures
104
filer’s financial statements 103
legal proceedings 104
management’s discussion and
analysis of company’s financial
condition 103–4
market risk 104
material defaults on senior securities
104–5
unregistered sales of equity securities
104
integrated disclosure system,
mandatory disclosure of
information under 1933 Act 49–98
automatic shelf registration 55
communication categories 54–5
excessive publicity during prefiling
period 52–3
factual business information,
publishation of 55–6
gun-jumping provisions 53, 55, 58
internet communication as written
communication 53–4
issuer types 57–9
issuer types, well-known seasoned
issuers (WKSI) 55, 58–9, 65
issuers seeking to qualify under $1
billion threshold 58–9
modern communication rules and
technological improvements
53–7
offers to sell or buy prior to
registration, prohibition of 52
prefiling communications 55
prospectus details 51, 52, 56, 61
real time communications, exclusion
of 54
registration method 60
registration requirements, violation
liability 66–7
registration, testing the waters prior
to 53
registration waiting period 50–51
required filings 50–53
security sale prohibitions 50
unseasoned issuers 59
integrated disclosure system,
mandatory disclosure of
information under 1933 Act,
registration process 60–66
disclosure of additional information
through SEC’s EDGAR system
60, 62
forward incorporation by reference
62–3
offering-related filings 60
shelf registration 63–6
shelf registration, adequate
information provision 65–6
shelf registration, takedowns 64
integrated disclosure system,
mandatory disclosure of
information under 1933 Act,
registration statement
effective 20 days after filing 60–61
Form S-1 62–3, 64, 72
Form S-2 and participation in 1934
Act reporting system for at least
three years 63
Form S-3 and absence of
issuer-specific information 63,
65
forms for 61–3
incomplete or inaccurate information
60–61
integrated disclosure system,
mandatory disclosure of
information under 1933 Act,
specific disclosure requirements,
Regulation S-K 67–88
accountancy changes and
disagreements 77–8
business, property and legal
proceeding involvement 68–71
business, property and legal
proceeding involvement,
property description 69–70
directors, executive officers, promoters and control persons 80
disclosure controls and procedures by principal executives and financial officers 79
executive compensation 80–81
exhibits table 84–7
financial information 75–9
financial information, supplementary 76
future economic performance projections 68
general requirements 67–8
industry guides 88
information to facilitate investor understanding 68
management and certain security holders 79–82
management and certain security holders, code of ethics 81–2
management and certain security holders, indebtedness 81
management and certain security holders, transactions that exceed $120,000 81
management’s discussion and analysis (MD&A) 75, 76
market risk, quantitative information 78–9
non-financial statements portions of registration statements 68
integrated disclosure system, mandatory disclosure of information under 1933 Act, specific disclosure requirements, Regulation S-K, registration statement and prospectus provisions 82–4
contingent compensation arrangements between registrant and named experts 84
front cover page 82
indemnification for liabilities 84
offering diluting existing shares for class of common equity securities 83–4
offering price for common equity securities 83
risk factors 83
underwriters, identification of 83–4
integrated disclosure system, mandatory disclosure of information under 1933 Act, specific disclosure requirements, Regulation S-K, securities of the registrant 71–5
cash dividends 72
common equity disclosure if no established public market 72
cumulative total shareholder return 73
debt securities 74–5
description of 73–5
holder numbers 72
market information 71–2
securities authorized for issuance under equity compensation plans 73
warrants and rights 75
integrated disclosure system, mandatory disclosure of information under 1933 Act, specific disclosure requirements, Regulation S-X 88–98
accountancy qualifications and reports 89–90
accountant reports 88–9
financial statements 88–94
financial statements, filing requirements 92–3
financial statements, interim 95–7
financial statements, pro forma
financial information 97–8
intermediaries and any associated persons 352–3
internal affairs doctrine 247
internal controls, public company disclosures 298–300
International Banking Act 39
International Swaps & Derivatives Association (ISDA) 323
Internet communication as written communication 53–4
Electronic Communications Networks (ECNs) 190–91
high frequency trading 499–504
regulatory challenges 240–41
social media 363
intrastate offerings see exemptions from
1933 Act registration, intrastate offerings
introducing broker (IB) 319, 332–3
investment adviser, fraud and mutual
fund issues 410–11
investment adviser regulation 228–43
adviser categories 230–31, 232
assets under management (AUM)
231, 232–3, 234, 235, 236–7, 238
blue sky laws 238–9
broker-dealer exclusions 230
client consent for contract assignment
228, 241
clients residents of adviser’s principal
place of business, exclusion of 233
contingent fee arrangements,
prohibition of 228
custody of client assets 240
definitions 229–30
ethics code 241
exchange-listed securities, exclusion of 233
taxes 242–3
foreign private adviser exemption
232
hedge fund advisers 230–31, 232
Internet, regulatory challenges
240–41
investment adviser definition 229–30
Private Fund Investment Advisers
Registration Act (PFIARA)
231–3
professional exclusions 229–30
prohibited practices 241–2
qualified clients and net-worth test
239
registration 231–3
SEC and Commodity Futures Trading
Commission (CFTC) 236
SEC and Financial Stability
Oversight Council (FSOC) 233,
234–5, 236, 237–8
securities definition 229
violation sanctions 228–9
written policies and procedures 242
investment adviser regulation,
disclosure requirements 233–8
conflicts of interest, avoidance of 235
funds managed by investment adviser
237
mandatory 234–5
narrative brochure 234
Net Asset Value (NAV) by hedge fund
strategy 237
voting on portfolio securities 236
Investment Advisers Act (IAA) (1940)
3–4, 14, 228–30, 233, 239,
240–41, 242, 385–6, 410
investment bank discretion,
underwriting process 157–9
Investment Company Act (1940) 4, 14,
20–21, 38, 120
investment contracts, federal securities
laws see security definition under
federal securities laws, investment
contracts and Howey test
investment intent, underwriting process
and secondary distribution 165–6,
169–70, 172, 173–5, 181
investment letter requirements 127–8
investor protection, underwriting
process see underwriting process
and secondary distribution,
secondary securities markets,
investor protection and access
issues
IOSCO (International Organization of
Securities Commissions) and
credit default swaps 515–16
Itoh, T. 514
Ivanov, V. 178
Jamroz, M. 217
Japan, securities regulation see under
global securities regulation,
comparative analysis
538  Research handbook on securities regulation in the United States

JOBS (Jumpstart Our Business Startups) Act 179–80, 299
crowdfunding exemption 353–4
intermediaries and any associated persons, broker-dealer regulation 352–3
and offerings up to $50 million per year 122–3
Johnson, K. 344
Johnson, L. 302
Jones, H. 512
judicial review of awards 446–8
jurisdiction battles, derivative instruments regulation see
derivative instruments regulation, jurisdictional battles
Kaal, Wulf A. 228–43
Katsoris, C. 415
Kiesewetter, B. 508
Kissler, A. 513
Klein, W. 27
Koniak, S. 312
Kornblau, D. 394
Kraakman, R. 163
Kroger, J. 88
Krupka, C. 346
Laby, Arthur B. 12–46
Lacayo, R. 311
Langevoort, D. 400
Larsen, P. 505, 506
late trading and market timing 409–10
Lawrence, J. 303
Lawton, C. 511
leveraging practices 207–8, 210, 211–13, 254
liberalization considerations, underwriting process and secondary distribution 180–81
limited liability companies (LLC) 26–8, 251
limited offerings not exceeding $5 million 122, 130, 131, 132, 133–4
Lipton, D. 401, 508
Lipton, E. 344
liquidity requirements 203, 204, 216–17
Liston, Mark 457–87
Ljungqvist, A. 158
Loans to executives, prohibition of 259, 307
Logue, D. 159
Longstaff, F. 176
Loomis, P. 185
Loss, L. 13, 21, 22, 31, 34, 35, 38, 160
Loughran, T. 158
Lucchetti, A. 495
McCarran-Ferguson Act 37
Maccharola, M. 308
McGinty, P. 28
McGonigle, T. 508
MacLeod Heminway, Joan 282–315
Madoff scandal 6, 366, 410
Mahoney, C. 8
Maitland, W. 343
“maker-taker” pricing model 190
Malyshiev, P. 347
management, integrated disclosure system 79–82
management’s discussion and analysis (MD&A) 75, 76, 103–4, 106, 253, 298
mandatory requirements broker-dealer membership 357–8, 359–61
disclosure as instrument of behavioral change 285
integrated disclosure system see integrated disclosure system, mandatory disclosure of information under 1933 Act
investment adviser regulation 234–5
public accounting firms, call for mandatory rotation of registered
293
securities arbitration between customers and brokerage firms 453–5
manipulative practices derivative instruments regulation 336–8
and fraud see fraud, manipulation and other prohibited practices
Index

Manne, H. 182
Markham, Jerry W. 1–11, 201, 244–81, 316–47, 378–411, 488–516
markups, markdowns and commissions 403
Martin Report, secondary markets 188
Masters, B. 507
Masucci, D. 415
Means, G. 247
mergers and acquisitions see corporate governance and regulation, mergers and acquisitions and Williams Act
Merrill Lynch 40, 320, 335, 383, 401, 402, 404, 459, 461, 466–7
Meyer, G. 504
misstatements regulation see Sarbanes-Oxley Act, fraud and misstatements regulation
misuse of customer funds 405–6
Model Business Corporation Act 247
monitoring see supervision
Morris, E. 415
Munoz, S. 505
mutual funds, and fraud see fraud, manipulation and other prohibited practices, mutual fund issues
Nagy, D. 289–90
National Association of Securities Dealers (NASD) arbitration code 415–16, 428, 436–7
dispositive motions 437–9
expungement 439–42
Neutral List Selection System (NLSS) 430–31
principals and supervisory controls 369–70
private rights of action 457–8, 459–60, 461, 462, 464, 466, 474
national market system (NMS), secondary markets 185–6, 188, 192–3, 194, 195–9
national securities exchanges, secondary markets 189–90
National Securities Markets Improvement Act (NSMIA) 110, 238
New York Labor Law 481–2
Nickles, S. 313
non-issuers, downstream sales by 148–50
North America Securities Administrators Association (NASAA) 495–6
notes exemptions from 1933 Act registration 111–12
as securities, federal securities laws see security definition under federal securities laws, notes as securities
offshore transactions 152–3
Omnibus Revenue Reconciliation Act 254–5
Options Clearing Corporation (OCC) 321–2
options and futures definition 34–5
Orcutt, J. 292
out-of-state operations and use of proceeds 117
over-the-counter (OTC) derivatives broker-dealer compensation 375–6
energy derivatives exemption 343
and lack of regulation 35
risk-based regulatory capital rise, banks 206
secondary markets 192
overlapping jurisdiction derivative instruments regulation 346–7
state securities laws 110–11
Painter, R. 382
Pan, E. 509
Parchomovsky, G. 181
Partnoy, F. 163
Patterson, S. 501–2
Paz, Marlon Q. 185–200
Pazicky, L. 305
Research handbook on securities regulation in the United States

PDAAs (predispute arbitration agreements) 413, 414, 416, 418, 423–4, 425, 449–50, 453–4
Pecora, F. 1
penny stocks 399–400
pensions 43, 111
Perino, M. 449
personal loans to directors and executives 259, 307
Peterson, P. 204, 206
plain English initiative 436, 437
portfolio securities, voting on 236
Poser, N. 377, 400
Postal, A. 322–3
predispute arbitration agreements (PDAAs) 413, 414, 416, 418, 423–4, 425, 449–50, 453–4
Prentice, J. 303
Prentice, R. 294, 299
Private Fund Investment Advisers Registration Act (PFIARA) 231–3
private placement exemption see exemptions from 1933 Act registration, issuer transactions not involving a public offering (private placement exemption)
private rights of action 457–87
aiding and abetting liability rejection 381
FINRA duty to supervise 459
FINRA “Know Your Customer” requirement 458–9
FINRA rule violations framed as breach of contract claims 462–3
forums available for customers damaged by CEA violations 338
fraud, manipulation and other prohibited practices 379–80, 384, 384–5
Investment Advisers Act 471–2
National Association of Securities Dealers (NASD) rules 457–8, 459–60, 461, 462, 464, 466, 474
Securities Exchange Act 460–61
suitability and supervision rules 457–9
suitability and supervision rules, violation of 459–63
private rights of action, future uncertainty of securities class action 473–87
arbitration 477–81
class action waivers 475–6
cost-benefit imbalance 479–81
Discover Bank Rule 475–6
efficient capital markets hypothesis 484
Federal Arbitration Act and application to securities disputes 474–83
FINRA rules on customer v. member class litigation and arbitration 473–4
fraud-on-the-market presumption, and information disclosure 483–7
fraud-on-the-market presumption, overruling, impact of 486–7
fraud-on-the-market presumption, reliance presumption 485–6
misrepresentation evidence 486
reasonableness requirement 485
private rights of action, private remedies available based on FINRA rule violations 464–7
claims submitted 2009–13 465
damages routinely awarded by arbitrators for violation of rules 464–5
negligence claims 466–7
negligence claims, investor recovery strategies 467
Private Securities Litigation Reform Act (PSLRA) (1995) 277, 382–3
professional exclusions, investment adviser regulation 229–30
prohibited practices see fraud, manipulation and other prohibited practices
prospectus provisions delivery requirements, secondary transactions 151
integrated disclosure system see integrated disclosure system, mandatory disclosure of information under 1933 Act, specific disclosure requirements, Regulation S-K, registration statement and prospectus provisions
Securities Act (1933) registration 276
underwriting process and secondary distribution 161
proxy rules see corporate governance and regulation, proxy rules
Public Company Accounting Oversight Board (PCAOB) 289–91
public company activities, Sarbanes-Oxley Act see Sarbanes-Oxley Act, public company activities
public company disclosures, Sarbanes-Oxley Act see Sarbanes-Oxley Act, public company disclosures
pump-and-dump schemes 392–3
purchaser representative definition 130
“race to the bottom” avoidance 205–6
real-time communications 54, 302–3
reasoned awards, Ruder Report 442–4
registration
and audit requirement, corporate governance 252
broker-dealer regulation see broker-dealer regulation, compliance-related issues, registration process
integrated disclosure system see under integrated disclosure system, mandatory disclosure of information under 1933 Act
investment adviser regulation 231–3
shelf registration 55, 63–6, 163
underwriters’ statement 83–4, 160–61
regulatory capital, risk-based see risk-based regulatory capital rise
regulatory safe harbor see safe harbor rule
regulatory structure
secondary markets see secondary markets, regulatory structure
underwriting process and secondary distribution 160–63
reparation damages 338–9, 384, 426–7
resale of securities see underwriting process and secondary distribution
Ribstein, L. 28
rigged trades 393–4
Ripley, A. 311
risk factors
broker-dealer regulation, risk-based examination 366–7
disclosure statements, commodity trading advisers (CTAs) and commodity pool operators (CPOs) 339–40
integrated disclosure system 78–9, 83, 104, 106
security definition under federal securities laws 42
risk-based regulatory capital rise 201–27
asset-liability structure 203
borrowing and share issuance 202
capital structure and investor claims 202
credit default swaps 203
creditor claims 202
financial reserves, need for 203
leveraging 203, 207–8, 210, 211–13
liquidity requirements 203
regulatory arbitrage 204–5, 214
regulatory capital as corporate finance problem 202–5
residual capital cushion 203
risk-based regulatory capital rise, banks capital adequacy and off-balance sheet assets and liabilities 208
capital adequacy rating system 206–7
capital after 2007 crisis 214–17
capital after 2007 crisis, new charges and standards 215–16
debt and equity financing, acceptable blend 208
deposit insurance and liquidity and solvency risks 204
equity provision 207
and Financial Stability Oversight Council (FSOC) 216
institutionalizing risk-based capital 205–13
liquidity crises 204
liquidity and funding 216–17
over-the-counter derivatives 206
“race to the bottom” avoidance 205–6
and regulatory capital rules 204
risk-weighted assets 207–8, 210, 211–12
self-evaluation of capital adequacy and Basel II 213–14
risk-based regulatory capital rise, banks, balance sheet after write-down 212
debt repayment rather than holding cash 212–13
financial examples 209
loss-adjusted regulatory balance sheet 211
market capital standards 210
mismatched balance sheets 204
net of debt-funded assets and liabilities 210
pro forma 206–7, 209–12
regulatory 206–8, 210, 211–12
risk-based regulatory capital rise, banks, Basel Capital Accord 206, 207, 208, 209, 214
(Basel I), Tier 1 core capital 208, 210, 211–13, 215
(Basel I), Tier 2 supplementary capital 208
Capital Adequacy Framework (Basel II) 213–14
existing tools and standards, refining (Basel III) 215–16
Liquidity Coverage Ratio (Basel III) 216–17
Net Stable Funding Ratio (Basel III) 217
risk-based regulatory capital rise, broker-dealer regulatory capital 217–22
financial balance sheet examples 219–20
firm’s equity and GAAP 218
internal models approach 221–2
net capital rule 217–21
SEC and Securities Investor Protection Corporation (SIPC) 217–18
risk-based regulatory capital rise, insurance companies 222–5
asset risk 224
business risk 224–5
GAAP use 223
minimum risk-based capital requirements 224–5
National Association of Insurance Commissioners (NAIC) standards 222, 223, 224–5
as savings and loan holding company (SLHC) 223
state regulation 222–3
as systemically important financial institutions 223
underwriting risk 224
risk-based regulatory capital rise, systemically important financial institutions (SIFI) 225–7
capital standards 227
and Financial Stability Oversight Council (FSOC) 226–7
nonbank financial company status 226
statutory classification 225–7
Ritter, J. 158
Roberts, D. 290
Rodrigues, U. 183, 300
Rogers, W. 512
roll-up transactions 279–80
Romano, R. 35, 181, 182
Roye, P. 4
Ruder Report see securities arbitration between customers and brokerage firms, Ruder Report
Index 543

safe harbor exemption see exemptions from 1933 Act registration, secondary transactions, safe harbor exemption
Sandler, A. 502
Saphir, A. 332
Sarbanes-Oxley Act 255, 258–9, 282–315
accounting standards 387
attorney conduct 311–13
auditor independence regulation 291–3
auditor independence regulation, provision of non-audit services 292
bankruptcy and discharge of debts 313
broker-dealer auditing requirements 364
congressionally mandated studies, extensive use of 285–6
disclosure transparency 286
employee whistleblowing 310–11
Enron Corp./Dynegy Inc. merger 282–3
federal regulation of corporate governance 284
fraudulent or misleading auditor influence, dealing with 293
mandatory disclosure as instrument of behavioral change 285
overview 283–7
pre-existing provisions, use of 286
public accounting firms, call for mandatory rotation of registered 293
Public Company Accounting Oversight Board (PCAOB), constitutional questions about authority 289–91
public company auditor supervision 287–91
public financial and accounting related matters 286
regulatory tools, changes in 283–4
SEC enforcement authority modifications 314
substantive regulation 284

Sarbanes-Oxley Act, fraud and misstatements regulation 303–6
civil enforcement actions 306
false or fraudulent pretenses, representations, or promises 304–5
impeding or obstructing investigations 304
mail and wire fraud, increased prison sentences 305
new crimes and criminal penalties 304–6
sentencing guidelines review 305–6
Sarbanes-Oxley Act, public company activities
audit committees, regulating structure and function of 293–5
audit committees, regulating structure and function of, complaint procedures 295
audit records, wilful destruction of 304
director and executive securities trading during blackouts, prohibition of 309–10
executive compensation clawbacks and asset freezes 307–9
executive compensation clawbacks and asset freezes, interpretation issues 308
personal loans to directors and executives, prohibition of 307
regulating substance of 306–10
Sarbanes-Oxley Act, public company disclosures 295–303
administrative process 295–6
CEO and CFO certifications 296–7
code of ethics for senior financial officers 300–301
financial expert disclosure requirement 301–2
financial statements, accuracy and completeness 297–8
internal controls 298–300
management discussion and analysis (MD&A) 298
real-time issuer disclosures 302–3
transactions involving management and principal stockholders and 1934 Act 298
savings clause for an insignificant failure 132
Schneider, C. 51
Schooner, H. 205, 213
Schuermann, T. 222, 224
Schwab case 450–53, 476–8
SEC see Securities and Exchange Commission
secondary distribution, and underwriting process see underwriting process and secondary distribution
secondary markets 185–200
Buttonwood Agreement 186
central market system, development of 188
“flash crash” (2010) 200
Martin Report 188
national market system 185–6, 188
regulatory structure history 186–8
SEC powers and 1975 Amendments 187–8
stock exchanges, emergence of 186–7
stock market crash (1929), causes of 187
secondary markets, market structure 188–92
alternative trading systems (ATS) as broker-dealers 189, 190–91
alternative trading systems (ATS), dark pools 191
automated exchange systems and liquidity rebates 190
broker-dealer internalization as undisplayed liquidity 191–2
Electronic Communications Networks (ECNs) 190–91
“maker-taker” pricing model 190
national securities exchanges 189–90
OTC (over-the-counter) market makers, broker-dealers as 192
trading center definition 189
secondary markets, regulatory structure 192–9
alternative trading systems (ATS) 193–4, 197, 199
broker routing services 198–9
consolidated information, network dissemination of 196–7
exchange, SEC interpretation 194
Financial Industry Regulatory Authority (FINRA) 191, 195, 196
limit order display requirement 195–6
market data 194–7
national market system (NMS) 192–3, 194, 195–9
order protection against trade-throughs 197–8
SEC 1975 Amendments 192–3
trading exchange centers 193–4
transparency requirements 195–6, 199
secondary transactions see exemptions from 1933 Act registration, secondary transactions
Securities Act (1933) antifraud provision 31
arbitration process 414
company registration 48
controlling shareholder status 168–9
corporate governance and regulation 251–2
corporate governance and regulation of mergers and acquisitions 251–2
and fraud see fraud, manipulation and other prohibited practices, Securities Act (1933), Section 17(A)
initial public offering (IPO), corporate governance and regulation 252
insurance products 36, 37
investment contract definition 16
mandatory disclosure of information see integrated disclosure system, mandatory disclosure of information under 1933 Act
market data collection and distribution 195
Index 545

notes as securities 32, 43
overview 1–2
registration disclosures 160–61, 167
registration exemptions see exemptions from 1933 Act
registration resale of unregistered securities, statutory exemption 164–6
securities definition 12, 14–15, 29–30, 38–9
securities registered under the Securities Act (1933), corporate governance and regulation, mergers and acquisitions and Williams Act, tender offer 270–71
securities registered under Securities Act (1933), prospectus requirement, corporate governance and regulation, mergers and acquisitions and Williams Act, purchase of securities by issuer (going private transaction) 276
violation liability 66–7
securities arbitration between customers and brokerage firms 412–56
arbitrators’ ability 455–6
fairness perceptions 448–54
FINRA and dispute resolution 412–13
future of 448–56
judicial review of awards 446–8
McMahon decision 416–18
McMahon decision, and arbitration support 417–18
mandatory considerations 453–5
NASDAQ arbitration code 415–16, 428, 436–7
pre-McMahon arbitration 414–16
predispute arbitration agreements (PDAAs) 413, 414, 416, 418, 423–4, 449–50, 451–4
Schwab class action waiver 450–53
SICA response 415, 419
securities arbitration between customers and brokerage firms, post-McMahon reforms 418–24
arbitration rules 421
awards, public availability of 420–21
classification of arbiters 422–3
classification of arbiters, professionals 422–3
non-public (industry) arbitrator 422
predispute arbitration agreements (PDAAs) 423–4
procedures 421–2
procedures, awards 422
procedures, discovery process 421–2
procedures, record of hearing 422
SEC staff recommendations 419–20, 421, 422
SICA response to SEC recommendations 420–21, 422
written opinions, availability of 420, 421
securities arbitration between customers and brokerage firms, Ruder Report
arbitrator classification 433–4
arbitrator selection 430–33
arbitrator selection, FINRA All Public Panel Option 431–3
arbitrator training (FINRA) 435–6
chairperson qualifications (FINRA) 435
eligibility rule 427–8
expungement, FINRA proposals 441–2
expungement, NASD moratorium on arbitrator-ordered 439–42
extended collateral litigation 428
FINRA forum and representation of parties 444–5, 451, 452, 454
FINRA forum and representation of parties, non-attorney representatives (NARs) 444, 445
motion practice 437
NASDAQ and dispositive motions 437–9
NASDAQ Neutral List Selection System (NLSS) 430–31
NASDAQ’s Discovery Guide and information exchange 429–30
PDAA use 425
“plain English” revision of code 436, 437
punitive damages 426–7
reasoned awards 442–4
reasoned awards, chairperson role 444
reasoned awards, FINRA proposals 443–4
recommendations 425–6
small claims and lack of legal representation 445–6
training recommendations 426
voluntary mediation program 426
Securities Exchange Act (1934)
accounting standards 88
beneficial ownership 266
broker definition 137
broker-dealer monitoring 365–6, 367–8
broker-dealer registration 354–5, 356–7
broker-dealer regulation, compliance-related issues 350–51, 356–7, 358–9
broker-dealers and funding portal 353–4
capital raising process facilitation 48
and “classical” insider-trading theory 388–9
continuous disclosure see integrated disclosure system, continuous disclosure under 1934 Act
cumulative total shareholder return 73
employee compensation plans of issuers not subject to Exchange Act periodic reporting requirements 124–5
equal access to information 387–8
financial reporting, corporate governance and regulation of mergers and acquisitions 252–3
and fraud see fraud, manipulation and other prohibited practices,
Securities Exchange Act (1934), Section 10(B)
insider trading 387–8
integrated disclosure system see integrated disclosure system, continuous disclosure under 1934 Act, periodic reports
manipulation of security prices, prohibition of 391–2
margin limits on amount of funds investors can borrow to purchase stock 396
overlapping jurisdiction WITH CFTC 346
periodic reporting requirements 124–5, 131, 146, 147, 153, 163, 173
private rights of action 460–61
recordkeeping requirements, broker-dealer regulation 362
registration and participation in reporting system for at least three years 63
SEC creation 5, 10
SEC Office of Compliance Inspections and Examinations (OCIE) 365–6
securities definition 14–15, 30–31
securities trading after initial offering 48–9
short-swing profit liability provision 298
transactions involving management and principal stockholders, Sarbanes-Oxley Act 298
unseasoned issuers 59
and Williams Act see corporate governance and regulation of mergers and acquisitions, mergers and acquisitions and Williams Act
Securities and Exchange Commission (SEC)
administrative actions 9, 10–11
“ancillary” equitable relief 10
attorney conduct 311–13
best execution requirement, National Market System 508
broker-dealer fraud, shingle theory 397–8
CFTC merger proposal 492–4, 503–4
Index  547

civil penalties, maximum amount 10
code of ethics for senior financial
officers 300–301
companies’ provision of material
information 48–9
Corporate Finance Division 5
corporate monitor appointment 10
criminal prosecutions 9
cross-border regulation of EU and US
firms, concerns over 509
custody requirements for customer
funds 406
Customer Protection Rule 406
division of Enforcement 5, 8–9
Economic and Risk Analysis
Division 5
EDGAR system and disclosure of
additional information 60, 62
enforcement authority modifications,
Sarbanes-Oxley Act 314
Enforcement Division 5
examinations and Madoff scandal
366
federal court actions 9
financial analysts, information
disclosure to 407
financial expert disclosure
requirement 301–2
FINRA examinations, broker-dealer
regulation 365, 366–7, 373
general exemptive authority 153–4
hedge fund regulation 6, 499
high frequency trading, Market
Concept Release 500–503
injunctive relief 9–10
insider trading, civil penalties 10
insider trading, enforcement program
390
insider trading, FINRA surveillance
strategy 390
insider trading, penalties 389
internal control reports 299
investment adviser regulation see
investment adviser regulation
Investment Management Division 5
investor dispute resolution system
415
low priced “penny stocks”, suitability
requirements 399–400
municipal securities, compulsory
registration 7
national best bid and offer (NBBO)
401–2
Office of Compliance Inspections
and Examinations (OCIE) 365–6
Office of Credit Ratings 6
Office of Investor Advocate 6
options regulation 341–2
overview 5–6
plain English initiative 436, 437
proxy rules 255–8
pump-and-dump schemes 393
real-time issuer disclosures 302–3
registration statement, fraud,
manipulation and other
prohibited practices 383
regulatory concerns 6
regulatory powers 341–3
Sarbanes-Oxley Act and SEC
enforcement authority modifications 314
secondary markets and 1975
Amendments 187–8
secondary markets, regulatory
structure 192–3
securities arbitration and disclosure
rules 423–4
securities arbitration, revision of
arbitration code 436–7
and Securities Investor Protection
Corporation (SIPC) 217–18
security definition see security
definition under federal
securities laws
short selling 394–5
staff recommendations, securities
arbitration between customers
and brokerage firms 419–20,
421, 422
swaps regulation 7–8, 35–6, 203,
322–3, 342–5, 346, 377, 515–16
Trading and Markets Division 5
uniform fiduciary standard for
investment advisers and
broker-dealers 411
Wells Submission 8–9
Securities Industry Conference on Arbitration (SICA) 415, 419, 420–21, 422
Securities Investor Protection Act (SIPA) (1970) 405
Securities Investor Protection Corporation (SIPC) 3, 492
security definition under federal securities laws 12–46, 229
bonds and bank products 38–40
bonds and bank products, certificates of deposit 39–40, 44
banks and bank products, foreign banks 39
complexity of 12–13, 14–15
derivatives 34–6
dynamic nature of 13–14
insurance products 36–8
insurance products, exemption from registration 36–7
insurance products, Flexible Fund Annuity contract as security 38
insurance products, securities, differentiation from 37–8
Investment Company Act (1940) 4, 14, 20–21
options and futures 34–5
over-the-counter derivatives, and lack of regulation 35
Securities Act (1933) 12, 14–15
state regulation 40–41
state regulation, risk capital approach 41
statutory definition 14–15
swap agreements and increased regulation 35–6
security definition under federal securities laws, business organizations, interests in 24–9
anti-waiver provision 27–8
limited liability company (LLC) interests 26–8
partnership interests 25–6
partnership interests, limited partnership doctrine 26
real estate and condominium sales 28–9
stock as security 24–5
stock as security, sale of business doctrine 25
see also corporate governance and regulation
security definition under federal securities laws, emergent themes 41–5
alternate regulation 42–4
foreign regulatory scheme 43–4
note transactions 43
pension fund interests not securities 43
prosecutorial discretion and unregistered securities 44–5
risk factors 42
security definition under federal securities laws, investment contracts and Howey test 15, 16–24
common enterprise 17–23
common enterprise, horizontal commonality 18, 20, 21–2, 23
common enterprise, vertical commonality 18–19, 20–22
discretionary accounts 19–22
discretionary accounts, financial advisor fees 19–20
economic reality test 24
efforts of others 22–4
failure to register securities sold to investors 44–5
investment of money 17, 26
profits expectation 22, 26
risk factors 42
single investors 18, 23
state criticism of 40–41
security definition under federal securities laws, notes as securities 29–34, 43
antifraud provisions 30–31
family resemblance test 32
Howey test 31, 32
investment value issues 32
loan participations 33–4
notes payable on demand 33
Index 549

notes that are not securities 32–3
Reves analysis 30, 31–3, 42
short-term and long-term 29–31
technical differences in interpretation 30–31, 42, 43
security holders and management, integrated disclosure system 79–82
security position listings, mergers and acquisitions and Williams Act 271–2
Seligman, J. 160
Shad-Johnson Accord and Futures Trading Act 341, 342
Shapiro, S. 383
shareholders
cumulative total shareholder return 73
executive pay and golden parachutes input 7
involvement, compensation disclosures 255–6
proxy voting see corporate governance and regulation, proxy rules
resale of unregistered securities 175
tendering more shares than originally sought 276–7
see also stock
shelf registration 55, 63–6, 163
Sherman, A. 157
shingle theory 397–8
short sales 394–6
SICA (Securities Industry Conference on Arbitration) 415, 419, 420–21, 422
Sides, M. 302
SIFI see risk-based regulatory capital rise, systemically important financial institutions (SIFI)
significant price discovery contracts (SPDCs) 344
Sjostrom, W. 179
small claims and lack of legal representation 445–6
small issues and small issuers see exemptions from 1933 Act
registration, small issues and small issuers (Regulation D)
social media 363
“soft dollar” practices 410
Solomon, D. 489
Spatt, C. 158
Spence, D. 294
Spindler, J. 159
Spindt, P. 158
Srivistava, S. 158
state regulation
broker-dealer registration 358, 367
corporate law statutes see corporate governance and regulation, state corporate law statutes
intra-state offerings see exemptions from 1933 Act registration, intra-state offerings
proxy rules 255–6
securities definition 12, 14–15, 40–41
securities laws overlap 110–11
Stegemoller, M. 300
Stein, W. 342
stock
exchanges, emergence of 186–7
options, compensation disclosures 254–5
purchase, margin requirements 396–7
as security 24–5
stockholder list 271–2
see also shareholders
Stokes, A. 396
Story, L. 495
Strine, L. 307
subprime mortgage securitizations 323
Summers, N. 256
supervision
and broker-dealer fraud 397–8
broker-dealer regulation see under broker-dealer regulation, compliance-related issues
swaps, credit default swaps 7–8, 35–6, 203, 322–3, 342–5, 346, 377, 515–16
switching between funds 409
Taylor, M. 205, 213, 494
550 Research handbook on securities regulation in the United States

tender offer, mergers and acquisitions
see corporate governance and regulation, mergers and acquisitions and Williams Act, tender offer
third party statements, mergers and acquisitions and Williams Act 273, 274
Thomas, L. 505
Thurber, B. 297
totality of circumstances test 264–5
trading center definition 189
transaction-based compensation and finders 352
transparency requirements, secondary markets 195–6, 199
Treasury Department Blueprint see global securities regulation, comparative analysis, US Treasury Department Blueprint
Trust Indenture Act (1939) 4–5, 14, 113
Tuch, A. 160, 163
“Twin Peaks”-style regulatory approach 493–5, 506
UK, securities regulation see global securities regulation, comparative analysis, UK
unauthorized trading claims 335
see also fraud
underwriting
registration statement and prospectus provisions 83–4, 160–61
risk-based regulatory capital rise, insurance companies 224
scandals 407–8
and secondary transactions see exemptions from 1933 Act registration, secondary transactions, underwriter definition
underwriting process and secondary distribution 156–84
accuracy requirements and due diligence defense 161–3
accurate disclosure goal 160–61
book building process 156–7
efficiency assessment 162–3
fee for pricing and selling services 159
firm commitment underwriting 159
informational problems, dealing with 159–60
investment bank discretion 157–9
prospectus completion 161
registration statement 160–61
regulation 160–63
resale of registered securities 175
shelf registration 163
underpricing of IPO shares 158–9
underwriter definition 162
underwriting process 156–63
underwriting types 159–60
underwriting process and secondary distribution, resale of unregistered securities 164–75
broker not involved 170–71, 175
controlling shareholders 175
holding period and investment intent 165–6, 173–5, 181
incremental liberalization history 174
information disclosure 174
investment intent 165–6, 169–70, 172, 173–5, 181
regulatory safe harbor 166, 171–5, 177, 180
regulatory safe harbor, and non-controlling shareholders 172–5, 180
resale does not constitute a distribution 166–7
securities have come to rest, controlling and non-controlling shareholders 168–71, 172–5
securities not yet come to rest 166–7
statutory exemption 164–6
underwriting process and secondary distribution, secondary securities markets, investor protection and access issues 176–83
accredited investors 179–80
holding period requirement 181
investor access in expanding private securities market 182–3
investor protection in expanding private securities market 179–82
liberalization considerations 180–81
private stock exchanges, emergence of 177–8
public and private securities market, liquidity differences between 176–8
public and private securities market, structural differences between 177–8
regulatory safe harbor 180–81, 182
resales of restricted securities 181–2
retail investors’ access problems 183
uniform fiduciary standard, recommendation of 375
unsolicited brokers’ transactions 136–8

Vaughn, T. 225
Velie, A. 346
violation
disciplinary measures for willful violation of regulations 367–8
liability, registration requirements 66–7
rules relating to suitability and supervision, private rights of action 459–63
sanctions, investment adviser regulation 228–9
state laws violation matters, exclusion of 255–6
voluntary mediation program 426

Wall, L. 204, 206
Walmsley, K. 318
Walsh, J. 398
warrants and rights, integrated disclosure system 75
Weiss, M. 222–3
Welch, I. 158
Werdigier, J. 503
Wheat Report 145
whistleblowing 6, 310–11
White, M. 44, 200
Wilhelm, W. 158
Williams Act, mergers and acquisitions
see corporate governance and regulation, mergers and acquisitions and Williams Act
Williamson, E. 494
Wilson, H. 504
Wilson, J. 256
“windfall” damages, prevention of 382
withdrawal opportunities, mergers and acquisitions and Williams Act 272–3
Womack, K. 157
“wrap” account 374
written opinions, securities arbitration between customers and brokerage firms 420, 421
written policies and procedures, investment adviser regulation 242
written supervisory procedures (WSPs), broker-dealer regulation 369, 370, 371, 372
Wynne, M. 9
Young, M. 342
Zweig, J. 500